

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3 IN RE FORFEITURE ORDER OF
TIM LEISSNER

23-MC-1505 (MKB)

4
against

United States Courthouse
Brooklyn, New York

5 UNITED STATES OF AMERICA,

March 15, 2024

6
Defendant.

11:00 a.m.

7 -----x

8 TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE
(IN OPEN COURT; ALL PRESENT VIA TELECONFERENCE.)

9 BEFORE THE HONORABLE MARGO K. BRODIE

10 UNITED STATES CHIEF DISTRICT JUDGE

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1 (In open court; all present via teleconference.)

2 THE COURTROOM DEPUTY: Judge, we're ready.

3 THE COURT: Winnie, would you please call the case.

4 THE COURTROOM DEPUTY: Yes, Judge.

5 Civil cause for a telephone conference. This is

6 Docket Number 23-MC-1505, In Re Forfeiture Order of Tim

7 Leissner, et al. versus United States of America.

8 Persons granted remote access to proceedings are

9 reminded of the general prohibition against photographing,

10 recording, and rebroadcasting of court proceedings. Violation

11 of these prohibitions may result in sanctions, including

12 removal of court issued media credentials, restricted entry to

13 future hearings, denial of entry to future hearings, or any

14 other sanctions deemed necessary by the Court.

15 Counsel, starting with the government, please state

16 your name for the record.

17 MS. PAYNE: AUSA Tanisha Payne for the government.

18 Good morning, Your Honor.

19 THE COURT: Good morning, Ms. Payne.

20 MR. ALBERTS: Jeffrey Alberts from Pryor Cashman for

21 petitioner Russell Simmons. And I'm accompanied by Rachel

22 Kaplowitz, who is also on the call and is an associate at our

23 firm. Good morning, Your Honor.

24 THE COURT: Good morning to you.

25 And Ms. Kaplowitz is that her last name?

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1 MR. ALBERTS: That's right, Your Honor.

2 THE COURT: Okay. Thank you.

3 I'm sorry, who else is on the line?

4 MS. PARLOVECCHIO: Good morning, Your Honor. Gina
5 Parlovecchio of Mayer Brown on behalf of Ken Siazon.

6 THE COURT: Good morning, Ms. Parlovecchio.

7 MR. ROTH: Good morning, Your Honor. This is
8 Michael Roth of King & Spalding on behalf of Kimora Lee
9 Simmons-Leissner.

10 THE COURT: Good morning to you.

11 Mr. Roth, do have someone else with you?

12 MR. ROTH: It's just me today. Thank you.

13 MR. AGNIFILO: And finally, Judge, I think you have
14 Mark Agnifilo and Teny Geragos for Roger Ng. Good morning,
15 Your Honor.

16 THE COURT: Good morning to both of you.

17 Okay. So it appears that some of the parties are
18 still negotiating, or we have proposed a schedule while
19 petitioner Russell Simmons is opposing any adjournment in this
20 case.

21 So I'm going to start with you, Mr. Alberts. I'm
22 not sure what exactly you're asking me to do here. I've
23 ordered the parties to engage in limited discovery for the
24 purposes of determining whether your client, at the time he
25 filed the petition, had an ownership interest in Nu Horizons

1 so that he proceed with the derivative action.

2 And it appears that -- I'm not sure what happened in
3 the last 30 days, but the parties need more time to do so.
4 Are you suggesting that I -- you appear to be suggesting,
5 rather, from your submission to the Court, that I need to
6 rescind my prior order and instead allow full discovery in
7 this case.

8 So I'll hear from you, Mr. Alberts.

9 MR. ALBERTS: Your Honor, Petitioner Simmons'
10 position is that it makes sense to open up discovery. It's
11 incredibly inefficient to have discovery so late on the issue
12 of standing. It's incredibly unusual. It is the case in
13 every single civil dispute that standing is a threshold issue.
14 It's also the case here. But it is a threshold issue with
15 respect to pleading. And Mr. Simmons has pled his standing
16 incredibly well, and the Court already ruled on that. It's
17 well pled.

18 The next issue is whether it's a dispositive issue.
19 It is a potentially dispositive issue, but there are many
20 dispositive issues in any civil dispute. And there's a reason
21 why courts do not, as a standard practice, have seriatim
22 discovery on individual dispositive issues, where you have
23 extended discovery on one dispositive issue, then motion
24 practice on that dispositive issue, then move on to the next
25 dispositive issue.

1 THE COURT: I'm going to interrupt you for one
2 second there.

3 I get that. But this is a standing issue, and
4 there's no question that I don't have jurisdiction to
5 entertain your client's claim if he doesn't have standing. So
6 it is a threshold issue that has to be resolved.

7 MR. ALBERTS: And we do not have any opposition to
8 resolving that issue, and we think it should be resolved the
9 way it is in nearly every single civil action before any
10 federal court, which is that it is one of the issues on which
11 there is discovery, and then there can be dispositive motion
12 practice on that issue.

13 And that's particularly the case here because of how
14 intertwined the issue of standing is with other issues.

15 This isn't a case -- the government has cited to a
16 couple of other forfeiture actions that are utterly dissimilar
17 from this one where you basically --

18 (Court reporter interrupts for clarification.)

19 MR. ALBERTS: So I was saying that this is an
20 utterly dissimilar case from the type of cases that were
21 pointed to by the government.

22 So I've handled -- I used to be in a forfeiture unit
23 and I've handled a lot of forfeiture cases, but you frequently
24 have these situations where, you know, there's, for example,
25 another member of a gang who's claiming to have some ownership

1 interest, they don't articulate how that is or why. Or you
2 have the wife of somebody that is a white collar criminal and
3 they say, well, I -- you know, I have - I contributed half the
4 value to this property, but they're unemployed.

5 And some extreme situation where it looks like, oh,
6 there could be very discrete efficient discovery on that one
7 issue because it doesn't make any sense what their allegation
8 is, and when you look at their pleading, they really didn't
9 explain how they had an ownership interest.

10 In stark contrast to those situations, this is a
11 case in which Mr. Simmons pled in incredible detail what his
12 interest was, including attaching the certificate of formation
13 of Nu Horizons that he signed, including attaching the stock
14 purchase agreement, the percent which Nu Horizons bought the
15 stock, including attaching SEC filings that identified Russell
16 Simmons and Nu Horizons as the owners of the stock. So it
17 could not be more clear that there's a well-pled basis for
18 standing.

19 But the question becomes is there a reason to adopt
20 the unusual approach of having discovery just on this issue --
21 dispositive issue of standing, as opposed to many other
22 issues. There are many dispositive issues in a case. You can
23 win on jurisdiction. You can win on a number of dispositive
24 issues, but it only makes sense to have this seriatim
25 discovery followed by motion practice, followed by discovery,

1 followed by motion practice, if the discovery is highly
2 discrete, and here it is not.

3 The government's theory here is that Russell Simmons
4 sold Nu Horizons to Kimora Simmons' entity Keway Pride, so a
5 stock transfer agreement, and Russell Simmons has several
6 arguments against this, which tie into a number of other
7 aspects of the case.

8 And so one of those arguments is that Kimora Lee
9 Simmons had already sold, secretly, Keway Pride, before the
10 stock transfer agreement was even signed. And so the stock
11 transfer agreement was never effective, and that's laid out in
12 the petition.

13 In addition, Russell Simmons has the argument that
14 the stock transfer agreement was unenforceable. Now for two
15 different reasons. One is that it was because of a fraud on
16 Russell Simmons; and the second because it was part of a
17 criminal money laundering conspiracy that was committed with
18 Tim Leissner.

19 And although the government in their letter suggests
20 that this is some new theory of petitioner, first of all,
21 petitioner is obliged to plead responses to the government's
22 standing argument in his petition; second of all, he did.

23 If you go to the petition, you will see that Russell
24 Simmons articulated with specificity trips that Kimora Simmons
25 took with Tim Leissner as part of this asset protection scheme

1 to Liechtenstein in Switzerland, and they were articulating,
2 you know, what they were doing, that it was part of this
3 criminal money laundering scheme.

4 The fourth argument that Russell Simmons has, which
5 also is in the petition, is that the stock transfer agreement
6 was void *ab initio* because of an agreement that was entered
7 into later that year, which is called the MITA or the M-I-T-A.

8 And those issues tie in with the knowledge of those
9 issues, whether or not it was part of a fraud; whether or not
10 the stock transfer agreement was legitimate; whether Kimora
11 Lee Simmons had already sold Kewway Pride before she signed
12 the stock transfer agreement on behalf of Kewway Pride.

13 Those are tied into a number of other issues in the
14 case factually, and also tied into them on an evidentiary
15 basis. Like the evidence of those facts include things like
16 the knowledge of Kimora Lee Simmons; the knowledge of
17 Defendant Leissner; the communications that they had on a
18 contemporaneous basis by email; statements that were
19 subsequently made to the government, both by Kimora and by Tim
20 Leissner when, for example, they used the stock as part of a
21 bond -- bond application.

22 So presumably they made representations about
23 whether they owned it. That's incredibly relevant to the
24 issue of ownership.

25 And so because you have this long period of time

1 where there are going to be relevant statements and documents,
2 and because we have the factual allegations that are at issue
3 that relate to standing are so intertwined with other aspects
4 of the case, it's incredibly inefficient to have discovery on
5 the issues that relate to standing and then restart discovery
6 later on.

7 Finally, it's prejudicial, but for the reason that I
8 articulated in my letter, the government now appears to be
9 saying that there's going to be multiple phases of discovery,
10 and it gets to take the deposition of Russell Simmons in every
11 one of those phases before there's a hearing where there will
12 then be testimony.

13 And as Your Honor is well aware, ancillary
14 proceedings are supposed to be moved very quickly. The
15 default is that it occurs 30 days after the original
16 preliminary order of forfeiture is filed. And in this case,
17 it's very understandable, but we're not trying to stick to
18 that 30-day period, but it seems to run counter to that
19 approach of moving things quickly to adopt the government's
20 proposal of this drawn out, seriatim stages of discovery that
21 delay the point in time at which the government's going to
22 finally have to show its cards.

23 We're now over five years after the point in time
24 when the government took custody of the property of
25 Nu Horizons and Mr. Simmons' assets, and the government has

1 repeatedly suggested that there's no prejudice there.

2 But that suggests that the government has never had
3 some government agents seize most of their property, pursuant
4 to a secret affidavit that has not been made public or
5 disclosed and held it for years, while they're unable to spend
6 it or use their own assets.

7 This is now a dispute over property. The government
8 has not ever had to reveal how it seized the property. The
9 one thing that the government has to do in this case, which is
10 to show that these assets were forfeitable, because they were
11 traceable to the crime, the government just chose not to do.
12 It didn't even try. It never made any showing that it was
13 subject to a preliminary order of forfeiture, just a change of
14 a preliminary order of forfeiture.

15 Now, finally, after dispositive motion practice and
16 the time has come for the government to start to show its
17 cards, it still is refusing to do that, and it's trying to
18 engage in one-sided discovery just on an issue that it thinks
19 it can win on without having to produce any documents or any
20 information about the strength of its case. And we're now,
21 you know, at the end of this accelerated special discovery
22 period that the government requested, and the government still
23 hasn't produced a page of documents or any information
24 whatsoever.

25 It's only fair at this point to allow discovery to

1 go forward, the way discussed in most civil actions, and the
2 way that it would most efficient in this action, and allow all
3 the parties to take discovery.

4 And those inefficiencies are only going to compound
5 as we move forward with this proceeding because, for example,
6 Russell Simmons has already received a discovery request from
7 another petitioner, from Ken Siazon. So you're going to have
8 different petitioners engaging in discovery in different
9 phases depending on whether the government feels like having
10 an accelerated discovery period on the issues that it thinks
11 it has the strongest case on with respect to all of these
12 different petitioners.

13 But the only efficient way to move forward, in light
14 of all of the overlap between the facts, the issues, the
15 claims of different parties, is to proceed as you would in
16 almost any civil case, which is to have open discovery
17 followed by briefing on all issues, including the dispositive
18 issue of standing, which we are not trying to avoid and are
19 happy to address, along with all of the dispositive issues in
20 this case.

21 THE COURT: Thank you, counsel, for your extensive
22 argument basically for this Court to reconsider its prior
23 ruling and to rule otherwise.

24 I'll hear from the government on this.

25 MS. PAYNE: Yes, Your Honor, thank you. You know,

1 contrary to counsel's claim, the government has, in fact,
2 diligently pursued discovery authorized by the Court, used a
3 lot of time not only to determine the scope of our records to
4 be searched and to respond to discovery requests, but also to
5 inform the government as to what requests the government will
6 and actually did serve.

7 From the outset, when we requested that the Court
8 permit discovery, we requested 90 days, and we took into
9 consideration all that would need to be done, including
10 searching through our voluminous case records, preparing
11 discovery requests, responding to discovery requests,
12 evaluating responses to those requests, identifying third
13 parties that may have relevant records, to indexing
14 depositions, et cetera, and also the fact that the other
15 claimants would be subject to discovery requests as well.

16 So counsel's opposition to a reasonable modification
17 of a discovery schedule is merely an attempt to mitigate the
18 Court's February 9th decision and to avoid being held
19 (indiscernible) to establish standing in this ancillary
20 proceeding.

21 Also contrary to counsel's argument, holding limited
22 discovery on the limited standing issue is not unusual. And
23 the government has cited Second Circuit, as well as other case
24 law, holding that -- holding and committing discovery on the
25 threshold issue.

1 And those cases are not distinguishable from this
2 case, including the case that the Court cited, the *Citigroup*
3 *Smith Barney* account case, where the threshold question of a
4 claim in standing was called into question because the court
5 did not have enough information. And in that case the court
6 allowed interrogatories as well as depositions of the
7 claimant, because as the law is clear, the claimant has the
8 burden to establish standing.

9 The government also disagrees with counsel's
10 assertion that the standing issue is intertwined with other
11 issues. This is a straightforward, discrete issue, and it's
12 whether Russell Simmons held, at the time of the filing of his
13 third-party petition, a membership interest in Nu Horizons.

14 Now, counsel mentioned certain of the agreements,
15 and I don't want to get too bogged down into the details of
16 those, but a basic tenant of contract law is that when you
17 sign, it transfers all property at issue to the assignee. If
18 there's a breach of that contract, there's a remedy
19 (indiscernible) to the terms of the contract.

20 In order for an assignor, who was transferred this
21 property to then regain his property, there would need to be
22 another assignment of the property back to the original
23 assignor. A breach of contract does not allow the parties to
24 revert back to the original status prior to the assignment.

25 And another hurdle specific to this case is that in

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1 Nu Horizons own operating agreement, their position set forth
2 requirements of reinstating a member, which may not have been
3 followed in this case.

4 So for those reasons, the government submits that a
5 reasonable extension of the discovery deadline is warranted
6 for 60 days with consent of the other parties. As I noted in
7 the government's letter, both counsel for plaintiff Kimora Lee
8 Simmons and counsel for Ken Saizon gave consent to the
9 modification. Those plaintiffs were also served with
10 discovery sets and may or may not be serving discovery sets of
11 their own.

12 And with respect to Claimant Ng, I'm advised that
13 counsel can offer more, but that they would get back to us and
14 the Court as to their position as to a continuance.

15 THE COURT: Thank you, Ms. Payne.

16 Mr. Agnifilo?

17 MS. PAYNE: Excuse me, I'm sorry. Your Honor, I
18 just wanted to confirm that the Court received the
19 government's two letters filed on March 14th, 2024.

20 THE COURT: I did.

21 MS. PAYNE: Okay, thank you.

22 THE COURT: Mr. Agnifilio?

23 MR. AGNIFILO: Yes, Your Honor. Since the time that
24 AUSA Payne submitted her letter, Ms. Geragos and I were able
25 to speak with our client, who as the Court knows is in

1 Malaysia, but we did speak with him, and I can tell Your Honor
2 we are speaking with the government and we would agree to the
3 proposed continuance.

4 THE COURT: Thank you.

5 Ms. Parlovecchio?

6 MS. PARLOVECCHIO: Yes, Your Honor. We also agree
7 to the 60-day continuance.

8 And just briefly, Your Honor, you know, I noted --
9 you noted that the parties have requested a briefing schedule,
10 and we just wanted to note that, you know, we -- the reason we
11 requested the period of 60 days to May 13th for the filing of
12 the government's anticipated motion, is because the parties
13 are continuing to engage in settlement discussions.

14 I don't believe that was noted in the status letter.
15 But due to the pace of settlement discussions to date, which
16 have been ongoing for months without significant progress,
17 from the government the hope is here that having a date on the
18 calendar will keep the parties on track in moving toward a
19 resolution.

20 And certainly, Your Honor, if the parties are
21 successful in making more significant progress in the next 60
22 days, we'll update Your Honor about whether there is any
23 further briefing schedule involved, and we'll keep Your Honor
24 updated. Thank you.

25 THE COURT: Thank you.

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1 Mr. Alberts, do you want to be heard further?

2 Or, Mr. Roth, do you want to be heard before I hear
3 back from Mr. Alberts?

4 MR. ROTH: Sorry, Your Honor, this is Mitchell Roth.
5 I would like to be heard for just a moment.

6 We don't oppose the schedule. However, there are
7 three parts on the limited discovery order that we would like
8 some verification on.

9 Initially we understood that the limited discovery
10 regarding Mr. Simmons' derivative standing would be limited to
11 the discovery between the government and Mr. Simmons on a very
12 narrow issue about whether Mr. Simmons held an interest in
13 Nu Horizons at the relevant time.

14 So first, if that discovery order allows for
15 discovery from other claimants, we would like that clarified,
16 and also clarified that the scope is limited to the direct
17 issue of the standing and not all of these side issues of
18 fraud and conspiracy that Mr. Alberts just raised.

19 And finally, if the discovery is going to include
20 other claimants, it should be -- one, it should be reciprocal,
21 so that the claimants can take discovery, and also plaintiff
22 should be served with all of this discovery and the responses.

23 This is the first time on this call that I'm hearing
24 that there's been quite a bit of discovery that wasn't
25 directed just to my client. The discovery directed to my

1 client didn't have a proof of service. Apparently it wasn't
2 served on anyone else. And if we going to be treated as a
3 party to this discovery and subject to the civil procedure
4 rules for party discovery, we need to be served and
5 participate in each aspect of that process.

6 THE COURT: Thank you.

7 MS. PARLOVECCHIO: Your Honor, I'm sorry. Your
8 Honor, counsel on behalf of Mr. Siazon joins in that request
9 as well.

10 THE COURT: Mr. Alberts?

11 MR. ALBERTS: Yes, Your Honor, I just have a few
12 points to make quickly.

13 First, I guess concerning the contract law argument
14 that AUSA Payne advanced about the reason why the transfer
15 can't be voided. There's several responses, and they tie back
16 to what I articulated earlier.

17 Now the first is the MITA, the M-I-T-A that was
18 signed at the end of 2018, and it's attached to Mr. Simmons'
19 petition, voids that transfer *ab initio*. It voids it at the
20 time that it took place.

21 The second, and this is in our argument that it's
22 even more straightforward and easy to understand, is that
23 Kimora, it appears from the SEC filing, and we're seeking
24 discovery with respect to this issue, it appears that Kimora
25 Lee Simmons had already sold Kewway Pride at the time that she

1 signed the document on behalf of Kewway Pride. She was thus a
2 stranger to Kewway Pride.

3 And you can't -- it would be like me trying to sell
4 the Brooklyn Bridge or the Empire State Building. If you
5 don't own something and you sign a document saying that you
6 own it and you sign on behalf of an entity that you don't have
7 any interest in, it is obvious that that transfer is not
8 valid.

9 I'm sure AUSA Payne would not suggest that if I sign
10 a document transferring to her the Empire State Building, then
11 that assignment is valid and the only way to challenge it is
12 to bring a breach of contract claim for damages. That's
13 clearly not the case, and they've never cited any law
14 suggesting that is the case.

15 Now, with respect to the argument advanced by
16 Mr. Roth concerning the limitation on the discovery, if Your
17 Honor were to prevent Russell Simmons from taking discovery
18 from the other petitioners, that would be a clear violation of
19 due process here.

20 The basis of the government's theory is that it
21 wins, it wins hundreds of millions of dollars that would
22 otherwise -- worth of an asset that would otherwise go to
23 Mr. Simmons because of a transfer that took place between
24 Russell Simmons and an entity that potentially was --
25 allegedly was controlled by Kimora Lee Simmons.

1 To then deny Russell Simmons the ability to take
2 discovery on that issue from Kimora Simmons would be a
3 complete violation of due process. Nothing could be more
4 relevant than the knowledge of Kimora Simmons, who is the
5 person who signed the documents on which the government
6 relies, and the validity of which is hotly contested here.

7 So were the government or were the Court to consider
8 the possibility of opposing that limitation, that would just
9 be another reason not to have this special accelerated
10 discovery period and just have normal open discovery like
11 would take place in any civil action.

12 THE COURT: Thank you all for your arguments today.

13 I'm sorry, did you have an additional point you
14 wanted to make, counsel?

15 MR. ALBERTS: Yes, I just wanted to say, and this
16 may be something that the Court will be addressing later, as I
17 think it may end up being a discovery dispute between the
18 parties, but the requests that are being made for documents
19 that stands for discovery generally but relates to fraud, it's
20 plainly relevant here, it's one of the primary bases that
21 Petitioner Simmons has advanced for why the stock transfer
22 agreement is invalid and unenforceable and, therefore, did not
23 effectuate a transfer of his interest in Nu Horizons. And so,
24 of course, Petitioner Simmons should be allowed to have
25 discovery on that issue.

1 THE COURT: Thank you, counsel.

2 So I believe my order was very clear in terms of
3 what we're ordering.

4 In my reconsideration decision that is dated
5 February 9th, 2024, I made clear that because the status of
6 petitioner's membership interest in Nu Horizons, as of the
7 date of the filing of the petition, could impact his ability
8 to bring derivative claim on behalf of Nu Horizons, the
9 parties were directed to engage in expedited discovery over a
10 period of 30 days to address this question.

11 There's no further limitation on the order, other
12 than I expect the parties to engage in discovery to figure
13 this issue out.

14 Now, Mr. Alberts, I appreciate your arguments as to
15 why you believe the Court should not allow discovery on this
16 issue that you believe the government has cherrypicked. But
17 as you see from my order, I do believe that if Mr. Simmons
18 does not have standing to bring his derivative claim, then his
19 petition get dismissed, because as I've already found, he does
20 not have standing to bring it on his own behalf.

21 So this is an issue that the Court has ordered must
22 be resolved, and I expect the parties to engage in discovery
23 so that it can be resolved as an initial matter.

24 Now, I'm not going to sit here and micromanage what
25 the parties are doing. You are all experienced counsel, and I

1 expect you to act as such and to figure out how to proceed
2 with the discovery that is necessary so that we can resolve
3 this.

4 I am going to extend the deadline by 60 days, and
5 I'm going to appoint a magistrate judge to work with the
6 parties on this, because it appears that you may need more
7 hand-holding than the Court is capable of engaging in right
8 now.

9 But the parties do need to sit down and confer,
10 figure out a schedule, and engage in whatever discovery is
11 necessary to resolve this issue. If you believe there are
12 legal issues that I need to decide, because you're fighting
13 over whether or not one party can obtain certain documents or
14 not, then you can bring that to my attention by way of a
15 letter motion, but I expect the parties to do this.

16 I'm going to put it on for a status conference.

17 Winnie, can you give me a conference date after the
18 60-month period, please?

19 THE COURTROOM DEPUTY: Yes, Judge.

20 Judge, May 8th at 11:30.

21 MS. PAYNE: I'm sorry, Your Honor, if I heard
22 correctly, May 8th. I believe 60 days -- I believe that that
23 wouldn't be beyond 60 days, if I'm not mistaken. It is our
24 request for the 60-day extension extend to May 17th.

25 THE COURTROOM DEPUTY: Judge, you're on trial that

1 week. May 23rd at 11:00.

2 MS. PAYNE: I apologize, again, Your Honor. May we
3 have -- sorry, the next week I will be out, and just in case I
4 need to cover the matter, I appreciate it.

5 THE COURTROOM DEPUTY: Judge, May 29th at 11:30.

6 THE COURT: Are the parties available on May 29th at
7 11:30?

8 MR. AGNIFILO: This a Mark Agnifilo, Judge. I have
9 something at 11. I can do it right before or right after,
10 either one.

11 THE COURT: Winnie, is 10:00 available?

12 THE COURTROOM DEPUTY: Yes, Judge, it is.

13 THE COURT: Does that work, Mr. Agnifilio?

14 MR. AGNIFILO: Yes, Judge. Thank you very much.

15 THE COURT: Is there anyone who cannot make that
16 date and time?

17 I'm adjourning this matter to May 29th at 10 a.m.

18 I expect the parties to work together to engage in
19 the necessary discovery so that this threshold issue can be
20 decided by the Court.

21 I will have the clerk of the court randomly assign a
22 magistrate judge to work with the parties on this matter.

23 Is there anything else we need to discuss today?

24 MS. PAYNE: Nothing from the government. Thank you,
25 Your Honor.

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1 MS. PARLOVECCHIO: Nothing from Mr. Siazon. Thank
2 you, Your Honor.

3 MR. ALBERTS: Your Honor, on behalf of
4 Petitioner Simmons, I just want to clarify to whom the parties
5 should go with regard to discovery? Because you said if
6 there's a dispute we could bring the issue to the Court. You
7 mentioned there's also a magistrate judge.

8 THE COURT: I'm sorry, go ahead, Mr. Alberts.

9 MR. ALBERTS: I was just going to say, there's one
10 issue that was already raised by the government in their
11 letter, and so maybe using that as an example it would be
12 helpful.

13 So the government has requested that it not be
14 required to produce statements that were made to it by
15 interviewed witnesses. So, for example, if Kimora Lee Simmons
16 was interviewed, or Tim Leissner was interviewed, and they
17 said, yes, we didn't even own Kewway Pride at the time that we
18 signed that, that was -- you know, we were just pretending we
19 owned it as an attempt to defraud Russell Simmons, that would
20 be really helpful for us to have.

21 The government, I believe, is saying they're
22 refusing to produce it. That probably is going to end up
23 being a dispute that will need to be briefed if the government
24 thinks there's a legal basis to not turn over any statements
25 that were made to it that are written down.

PROCEEDINGS

25

1 Should we go to you for that or should we go to the
2 magistrate judge?

3 THE COURT: We will appoint a magistrate judge, you
4 will go to the magistrate judge on all discovery issues.

5 MR. ALBERTS: Understood, Your Honor. Thank you.
6 Nothing further from Petitioner Simmons.

7 THE COURT: Thank you, Mr. Alberts.

8 We are adjourned. Have a good day everybody.

9 (CHORUS: Thank you, Your Honor.)

10

11 (Whereupon, the matter was concluded.)

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16 I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter.

18 s/ Linda D. Danelczyk

March 19, 2024

19 LINDA D. DANELCZYK

DATE

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